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IN THE
COURT OF APPEALS OF INDIANA

JERRY SUSONG, BETTY SUSONG, DEBBY KEEGAN, JOSEPH SOUTH, THOMAS QUEISSER, JOHN DOE, and JANE DOE,	)	
Appellants-Plaintiffs,	)	
vs.	)	No. 32A01-0607-CV-306
DON YOUNG and JODEAN YOUNG,	)	
Appellees-Defendants.	)	

APPEAL FROM THE HENDRICKS SUPERIOR COURT
The Honorable David Coleman, Judge
Cause No. 32D02-0506-CT-21

April 18, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Appellants-Plaintiffs Jerry Susong, Betty Susong, Debby Keegan, Joseph South, Thomas Queisser, John Doe, and Jane Doe (collectively referred to as "the Susongs")[1] appeal the Hendricks Superior Court's order granting summary judgment in favor of Appellees-Defendants Don and Jodean Young (collectively referred to as "the Youngs"). Concluding that the equitable doctrine of laches applies, we affirm.

Facts and Procedural History

This direct appeal involves the same locus and some of the personal property that the Youngs gained possession of through Young, et al v. Brad L. Susong, 32D01-0401-PL-1. In that case, the Youngs initiated a lawsuit against Brad Susong ("Brad") after he violated the terms of an agreement to purchase the Youngs' small engine shop[2] in Lizton, Indiana. On August 24, 2004, following a damages hearing, the trial court entered an order terminating the parties' agreement. In so doing, the trial court awarded the Youngs monetary damages, attorney's fees and court costs. The trial court's order also transferred possession of the business real estate and personal property therein to the Youngs. Appellants' App. p. 49. The Susongs had notice and opportunity to appear at this hearing, but failed to do so.

On May 23, 2005, the Susongs initiated the present cause by filing a complaint seeking return of personal property and/or compensation for such property, which they

[1] The Susongs assert that the trial court "erred in granting summary judgment against the remaining Plaintiffs Betty Susong, Debby Keegan, Joseph South, and Thomas Queisser." Br. of Appellants at 11. We find this argument to be disingenuous. Indiana Trial Rule 10(A) requires that "[I]n the complaint the title of the action shall include the names of all the parties . . ." Indiana Trial Rule 11 further requires that every pleading or motion of a party represented by an attorney shall be signed by at least one attorney of record. Here, all the parties set forth above were named in the complaint that initiated this cause and all the plaintiffs' pleadings and motions were signed by their attorney, Bradley K. Mohler as required by Indiana Trial Rules 10(A) and 11. Accordingly, the trial court's summary judgment order applies to all the parties named in the complaint.

[2] The Youngs operated a business involving the sale and repair of small engines, including lawn mowers.

claimed they had left on the premises of the Youngs' business prior to the trial court's August 24, 2004 order. On March 21, 2006, the Youngs filed a motion for summary judgment. A hearing was held on May 15, 2006, where both parties presented oral arguments concerning the Youngs' summary judgment motion. On May 30, 2006, the trial court issued an order granting the Youngs' motion for summary judgment and dismissing the Susongs' complaint. The following appeal ensued. Additional facts will be provided as necessary.

Standard of Review

Our standard of review of an order granting summary judgment is well settled. Summary judgment is appropriate if the "designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Zemco Mfg., Inc. v. Navistar Intern. Transp. Corp., 759 N.E.2d 239, 244 (Ind. Ct. App. 2001) (citing Ind. Trial Rule 56(C)). Relying on specifically designated evidence, the moving party bears the burden of making a prima facie showing that there are no genuine issues of material fact and that it is entitled to judgment as a matter of law. I/N Tek v. Hitachi Ltd., 734 N.E.2d 584, 586 (Ind. Ct. App. 2000), trans. denied. If the moving party meets these two requirements, the burden shifts to the nonmovant to set forth specifically designated facts showing that there is a genuine issue for trial. Id. A genuine issue of material fact exists where facts concerning an issue which would dispose of the litigation are in dispute or where the undisputed material facts are capable of supporting conflicting inferences on such an issue. Gilman v. Hohman, 725 N.E.2d 425, 428 (Ind. Ct. App. 2000), trans. denied.

A trial court's grant of summary judgment is clothed with a presumption of validity, and the party that lost in the trial court has the burden of demonstrating that the grant of summary judgment was erroneous. City of Indianapolis v. Byrns, 745 N.E.2d 312, 316 (Ind. Ct. App. 2001). On appeal, we are bound by the same standard as the trial court; thus, we consider only those matters that were designated at the summary judgment stage of the proceedings. Interstate Cold Storage v. General Motors Corp., 720 N.E.2d 727, 730 (Ind. Ct. App. 1999). Moreover, while we do not reweigh the evidence, we liberally construe all designated evidentiary material in the light most favorable to the nonmoving party to determine whether there is a genuine issue of material fact for trial. Estate of Hofgesang v. Hansford, 714 N.E.2d 1213, 1216 (Ind. Ct. App. 1999). A grant of summary judgment may be affirmed upon any theory supported by the designated materials. Bernstein v. Glavin, 725 N.E.2d 455, 458 (Ind. Ct. App. 2000), trans. denied.

Discussion and Decision

The Susongs assert that the trial court erred in granting the Youngs' motion for summary judgment. Specifically, the Susongs allege that the Youngs failed to establish all the required elements of the equitable doctrine of laches, and thus they were not entitled to judgment as a matter of law.

Laches is an equitable defense that may be raised to stop a person from asserting a claim he would normally be entitled to assert. Indiana Real Estate Comm'n v. Ackman, 766 N.E.2d 1269, 1273 (Ind. Ct. App. 2002). However, the doctrine of laches may not be applied arbitrarily, or in the absence of conformity with general principles of equity. Shriner v. Sheehan, 773 N.E.2d 833, 846 (Ind. Ct. App. 2002), trans. denied.

Laches requires evidence of: (1) inexcusable delay in asserting a right; (2) an implied waiver arising from a knowing acquiescence in existing conditions; and, (3) a change in circumstances causing prejudice to the adverse party. Lowry v. Lowry, 590 N.E.2d 612, 621 (Ind. Ct. App. 1992). A mere lapse in time is not sufficient to establish laches; thus, an unreasonable delay that causes prejudice or injury is necessary. SMDfund, Inc. v. Fort Wayne-Allen County Airport Auth., 831 N.E.2d 725, 731 (Ind. 2005). A trial court has considerable latitude in deciding whether to invoke laches, and its decision will not be reversed on appeal absent an abuse of that discretion. Shriner, 773 N.E.2d at 846.

There is no fixed or definite rule for the application of the doctrine of laches, but our review of the record leaves us convinced that this would seem a particularly fitting case to do so. With regard to the first element, inexcusable delay in asserting a known right, the Susongs argue that "[b]oth before and after the Youngs obtained possession of the business real estate, correspondence between the attorneys . . . discussed the identification and return of personal property . . . . However, no agreement on the items of property or the method for identifying those items was ever reached." Br. of Appellants at 9. However, these claims are not supported by the evidence. Our review of the record reveals that on May 19, 2004, the Youngs, through their attorney, sent a letter to the Susongs which stated, in pertinent part:

> Upon returning to the business premises, Mr. Young noticed that there are several items of property that the ownership of which is uncertain. Some of the items of property appear to be in the name of an entity named "SSE Outdoor Power Equipment" which appears to be a corporation that you formed. I am enclosing a preliminary inventory of items discovered by Mr. Young which do not appear to be owned by him.

> I am writing to advise you that it is not Mr. Young's intention to exercise unauthorized control over the items listed . . . . Instead, at the time of a hearing in Hendricks Superior Court No. 1 on June 3, 2004, at 10:00 a.m., Mr. Young intends to present these [sic] list to the Court and request the Court's assistance is disposing of this property.
>
> If you claim to be the owner of any of the property listed on the enclosed preliminary inventory, please let me know.

Appellants' App. p. 50. Thus, as of May 19, 2004, the Susongs were made aware of their potential rights in the property at issue. Following this letter, limited communication between the attorneys ensued which included: (1) one faxed list of property claimed by the Susongs, sent on June 1, 2004; (2) one letter inquiring about the Youngs' response to the fax, sent on June 8, 2004; and, (3) one demand letter sent on July 8, 2004. Appellant's App. pp. 51-54. However, even though the Susongs admitted that some of the property they claimed belonged to their customers, they never provided the Youngs with any verification or proof of ownership in the property they claimed was theirs. The Susongs also failed to appear at the hearing on the repossession of the premises and personal property therein ordered by the trial judge in the preceding cause. Finally, the Susongs made absolutely no attempt to assert their rights or provide proof of their ownership interests in the disputed property after the trial court's August 24, 2004 judgment and order in the earlier case, until the filing of their complaint in the underlying cause, approximately nine months later on May 23, 2005. Thus, the trial court properly determined that the Susongs inexcusably failed to assert their known rights in the personal property at issue.

The second element of laches, that an implied waiver arose from the Susongs' knowing acquiescence in the existing conditions, is also supported by the evidence. The

record reveals that the Susongs' lethargy in obtaining their property continued well after the trial court's judgment and order transferring possession of the property in question. On August 25, 2004, the day immediately following the trial court's order, the Youngs, through their attorney, reissued the May 19, 2004 letter to the Susongs. In so doing, the Youngs reiterated their willingness to return any personal property that the Susongs claimed, so long as they provided some sort of proof of ownership. Having received no response from the Susongs, the Youngs' attorney sent a second letter dated September 1, 2004, and a third letter dated September 2, 2004. The Susongs, however, failed to respond to any of the Youngs' letters and persisted in their silence for approximately nine months until the filing of their complaint in the present action on May 23, 2005. The Susongs' inexplicable silence and failure to assert their known ownership rights in the property at issue for approximately nine months following the previous trial court's order constitutes an implied waiver arising from their knowing acquiescence in the existing conditions.

While this delay was surely an unreasonable one, laches does not turn on time alone. SMDfund, Inc., 831 N.E.2d at 731. No one element, not even the passage of time, is sufficient to demonstrate laches. Indiana Real Estate Comm'n, 766 N.E.2d at 1274. Thus, unreasonable delay *which causes prejudice or injury* is necessary. SMDfund, Inc., 831 N.E.2d at 731 (emphasis added). Because of the Susongs' conscious indifference, the Youngs were forced to protect and store the property in question, which included, among many other things, an automatic handgun, two desktop computers, a 60" upper and lower desk with drawers, storage, and computer area, a desk chair, two mowers,

mechanics tools, a boat and trailer, a Ford tractor, a John Deer bush hog, a chainsaw, a hand held auger type post hole digger, a pressure washer, and two tillers. Appellants' App. p. 52. Thus, "the Youngs had received nothing for the property, either to repair or store it, yet there it sat, eating up space . . . [and] by virtue of the fact that they sat in the business premises, the Youngs' insurance was more costly." Brief of Appellees at 13.

The general doctrine of laches is well established and has long recognized that "courts of equity uniformly decline to assist a person who has slept upon his rights and shows no excuse for his laches in asserting them." SMDfund, Inc., 831 N.E.2d at 727. Beginning as early as May of 2004, the Susongs were made aware of the fact that the Youngs were in possession of certain personal property in which the Susongs might have an ownership interest. However, for reasons unknown, the Susongs failed to assert their ownership rights in said property from July 8, 2004, until May 23, 2005, thereby adversely affecting the Youngs. Based on the foregoing, we conclude that the Susongs' procrastination operates to bar their claim. A trial court has considerable latitude in deciding whether to invoke laches, and its decision will not be reversed on appeal absent an abuse of discretion. Shriner, 773 N.E.2d at 846. Our review of the record leaves us convinced that the trial court did not abuse its discretion in granting summary judgment in favor of the Youngs upon the theory of laches.[3] Accordingly, we affirm.

Affirmed.

NAJAM, J., and MAY, J., concur.

[3] Because we conclude that the trial court properly granted the Youngs' motion for summary judgment based on the doctrine of laches, we need not address the Susongs' additional argument that the trial court improperly applied the doctrine of waiver in granting the Youngs' motion for summary judgment.